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IN THE

Supreme Court of the United States

October Term, 1956

No. 678

MARK J. HAMMETT, *Petitioner*

v.

TIMES-HERALD, INC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Mark J. Hammett, petitioner, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fourth Circuit entered in the above case on November 14, 1955.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 328 F. (2) 987.

JURISDICTION

The judgments of the Court of Appeals for the Fourth Circuit were made and entered on November 14, 1955, and copies thereof are appended to this petition in the Ap-

pendix at p. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

On April 29, 1952, the respondent printed a series of false and defamatory accusations against the *personal* reputation of the petitioner. The very morning the article appeared several readers thereof were so horrified at its general defamatory text that they phoned their impressions of same to petitioner's headquarters. Additional expressions from readers of the article as to the impression the article had on their minds came to petitioner at his residence that night after office hours. Most of them wanted to know what petitioner had done to cause such defamations to be printed in a paper of 263,000 circulation. If true, they said, they certainly would not want a candidate guilty of such imputed immorality and unethical traits to represent them in Congress. Such references to the defamatory false accusations have been ever recurrent to the present. To vindicate his personal reputation (the article did not assail any public act, actual or proposed), the petitioner had no choice other than to avail himself of the protection the law of libel affords. The United States District Court for the State of Maryland denied practically all the 21 prayers presented in behalf of petitioner and gave the jury instructions of such nature that verdict could only be for respondent. The Court of Appeals affirmed. The questions presented are:

1. Whether the courts below erred in ruling that the 8 counts of false and defamatory accusations fall within the purview of the privilege of fair comment as provided in the law of libel, since *Nevada State Journal* v. *Henderson*, 294 Fed. 60, and the 14 other decisions of law cited, specify that the defense of fair comment extends only to expressions of opinion, and not to misstatements of facts. Because no evidence was offered to prove the truth of the accusations at issue, the decision of the court below appears to be contrary to law.

2. Whether, in contravention of *Post Pub. Co.* v. *Hallam*, 59 Fed. 530, and the 14 other authorities cited in harmony therewith, the lower courts (p. 630) erred in instructing the jury that when a person offers himself as a candidate for public office, even if a publication is false and defamatory the publisher is not liable therefor, etc.

3. Whether the court erred in instructing the jury (pp. 633, 634) that since George Dixon, the writer of the article, was not an employee or agent of the Times-Herald, etc., any damage occasioned by the article must not be imputed or attributed to the respondent. Such an instruction diametrically contravenes *Nieman-Marcus Co.* v. *Lait*, 14 Federal Rules Decisions 159, 4/16/53, and the other authorities cited in the appeal.

4. Whether the lower court erred in instructing the jury (p. 634) that the following *false* accusations were not defamatory, though imputations of the same or similar defamations had been ruled libelous per se in the laws cited in each count infra:

(a) That petitioner was "so pure and noble as to be almost too much for this sinful world", thus suggesting that petitioner was a general misfit in the concourse of human society; thereby subjecting him to hatred, scorn, contempt and ridicule, all of which have been ruled libelous per se, as in *Estill* v. *Hearst*, 186 Fed. (2) 1017, 1/29/51, and others;

(b) That petitioner was "the saintly aspirant", thus ironically ridiculing petitioner so that "the readers would have something to laugh at," as the author explained (*Trigg* v. *Sun Printing*, 179 N.Y. 144);

(c) That petitioner had represented himself as being an unearthly contrast to the worldly Mr. Sasscer (Congressman), thus giving the false impression that petitioner had spoken evil of one of Southern Maryland's most illustrious citizens, thereby subjecting petitioner

to public hatred and contempt (*Weeks* v. *News Pub. Co.*, 117 Md. 126 and others);

(d) That "it is a wonder we have not all heard of (Mr. Hammett) petitioner before," thus imputing to petitioner false pretenses and unworthiness of public trust (*Kutcher* v. *Post Printing Co.*, 147 Pac. 517 and others);

(e) That petitioner was "by his own admission one of the most remarkable men that ever lived", thus imputing to petitioner the reputation of being a notorious public liar or a flagrant imbecile (*Foerster* v. *Ridder*, 57 N.Y.S. (2) 668 and others);

(f) That petitioner had set himself as "one man" to enact the legislative program outlined in his platform, thus representing petitioner as being a person of unsound mind (*Totter* v. *Sun*, 109 Fed. Reporter 289 and others);

(g) That petitioner's qualifications were "few-trifling," thereby falsely imputing incompetency in one's profession, office, occupation, or employment (*Caldwell* v. *Crowell-Collier*, 161 Fed. (2) 333, 4/21/47, and others).

5. Whether the trial court erred by instructing the jury (p. 630), without first adducing evidence in support thereof, that the brochure in question was a *published literary work*, merely because counsel for respondent had requested such an instruction to the jury in an effort to exculpate respondent of liability. Since the law of libel affords newspapers almost unlimited privilege to criticise literary works which become *published* by copyright or are otherwise unrestrictedly dedicated to the general public, the object of requesting and granting such an instruction is obvious. The Court instructed the jury (p. 630) that "when a person published a book or brochure such as the one offered in evidence in this case," * * * "The law on that is that even if

a publication is false and defamatory, the publisher is not liable therefor, etc."

6. Whether the trial court erred in instructing the jury (p. 631) that publishers have wide freedom in extravagant and unjustified criticism of the *public acts* of those who seek public office, thereby causing the jury to believe that the defamations in case at bar were a condemnation of petitioner's public acts, whereas all of the 8 counts of libelous matter refer to, and were hurled at, petitioner's private character and personal reputation.

7. Whether the courts below erred in their refusal to construe words in their ordinary meaning as contained in standard dictionaries and to grant petitioner's request for instruction to the jury that, aside from the counts of libelous matter ruled by this court to be only "fair comment," the last question "Anybody like to go with him steady?" is libelous per se, because Webster's standard dictionary supports, and Dr. Malone, respondent's witness on the meaning of phrases, (p. 605) testified that this phrase as between men decidedly suggests addiction to homosexuality. George Dixon, in whose column the article appeared, had previously sworn (p. 462) that he meant the word "anybody" to include men. Despite the complete examples cited in section II, count 8, of petitioner's brief, to show that this question was logically construed to mean what the average lay reader would read them to mean, the Court of Appeals arbitrarily brushed the issue aside by ruling that such contention is frivolous, without ruling what other meaning such phrase could have had. For the readers who may have read the question to mean that petitioner was addicted to going steady with women, the statement is equally libelous per se, for petitioner is a married man and is not guilty of marital misconduct such as this question would import (*Peinhardt* v. *West*, 115 Sou. 88, and others).

8. Whether, in contravention of *Rue* v. *Mitchell*, 2 U. S. Supreme 58, and other precedents of law which permit such,

the trial court erred in its refusal to permit petitioner to produce witnesses to testify as to the impression their reading of the article had on their minds. On pp. 101 and 380 of transcript of trial proceedings the witness, Herbert Freeman, was intercepted by the court when he started to tell the jury what he understood the article to mean. Because of this restriction the scores of remaining witnesses, who were available to testify as to the impression the article had on their minds, were not heard by the court. Since as ruled in *Peck* v. *Tribune*, 214 U.S. 185, "an alleged defamation is defamatory if thus thought of by a considerable and respectable class in the community," the outcome of the case rested largely upon such denied testimonies. The right to establish a libel by production of direct evidence was in recent years accorded in *Mattox* v. *News Syndicate Co. Inc.*, 176 Fed. (2) 897, 2/9/49.

9. Whether, at variance with *Roth* v. *News*, 217 N.C. 13, and others, the trial court erred in denying petitioner's instruction to the jury that the Times-Herald was guilty of expressed malice as shown by the falsity, the reckless disregard of petitioner's right to reputation, the avowed practice of the Times-Herald of taking pot-shots at individuals, to publish articles to amuse the public, etc., and because of such the jury was warranted under the law to award punitive damages.

STATEMENT

Equal justice under the law is a basic axiom of our American system of justice. The failure of the lower courts to cite any precedent of law for the various instructions to the jury (any one of which would have completely exculpated the respondent) and the Per Curiam affirmation thereof by the Court of Appeals, constitute such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of the United States Supreme Court's power of supervision. Without exception, all libel suits are prosecuted and ruled upon by courts according

to precedents of applicable published laws so that all citizens are given equal rights under the law of libel to protect their reputations. Despite the amplitude of decisions of law cited in support of petitioner's appeal, the court failed to rule on their applicability or inapplicability to the points under appeal.

Libel suits usually are adjudicated according to legal precedents, the forerunners of which go far back into history. Petitioner has reviewed the case of *Peck* v. *Tribune*, 214 U.S. 185, and since it comprises two basic points at issue in this petition, same could, in part, be relied upon as a precedent. The two points in common are—

(1) The unauthorized use of common-law property;

(2) The publication of false and defamatory statements allegedly based upon such unauthorized use of common-law property.

The Court of Appeals summarily affirmed the trial court's instructions to the jury on the grounds that the article ridiculed a brochure circulated by petitioner. In doing so, these facts and points of law were arbitrarily disregarded:

(1) That the referred to brochure was a purely private letter, the nature, purpose, use and private dissemination of which definitely constitute every legal requirement for petitioner's common-law right to his private property which is not vitiated by the fact that he was a candidate for public office, as ruled in *Publishing Co.* v. *Maloney*, 33 N.E. at p. 926. As such, no one has a legal right to publish to the world a private letter without the owner's consent. The laws in support of this common-law property right were fully presented to the Court of Appeals in section VII of Appellant's Brief.

(2) That the 8 false accusations fully outlined in section II of Appellant's Brief are not contained in the

private letter in question. Sworn testimony in admission of such is contained in the depositions of both George Dixon (pp. 17 and 55) and Frank Campbell Waldrop, the Executive Editor (p. 51). The deposition of George Dixon, the author of the article, on this point was placed before the court on pages 427, 456, 459, 462, 467 and 475 of the transcript of trial proceedings. On each occasion when the author was asked to show where the specific false accusation, ascribed to petitioner, was found in the private letter, the author failed to find where such statement was contained therein. The alternative and negative justification was that only the parts of the article in quotes were in the document in question. Since those portions of the article in quotes were not at issue, the author thus conceded that the 8 counts of false and defamatory matter were his own accusations.

Since the common-law prohibits a newspaper from publishing a private letter without a specific authorization to do so and the further fact that the 8 false accusations at issue are not in the document mentioned, how could such document form the basis for a legal exculpation of the Times-Herald? No authority of law in support of such decision was cited by either of the courts below.

Moreover, the facts adduced in the trial failed to prove that the Times-Herald ever saw the private letter in question, upon which assumption the courts based their exculpation of respondent, until after the suit was filed. Evidence of such is shown by:

1. When petitioner personally confronted George Dixon a few days after the publication with a demand for an explanation of why he printed the series of false and defamatory statements, no reference to the document as its source was made by the author of the article.

2. When the suit was initiated, the Times-Herald could not produce a copy of the brochure but demanded

a copy thereof from petitioner under threat of subpoena.

3. In his deposition George Dixon (p. 415) failed to identify a copy of the brochure as ever having seen by him before; nor could he furnish the source from which he may have allegedly received the document in question. Mr. Waldrop, the Executive Editor (p. 539), likewise testified that he never saw the document until the day preceding his deposition.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it is not based upon the facts or points of law cited supra. Under our American system of government by the people, the sovereignty thus vested by the Constitution could be vitiated by a newspaper publishing false and defamatory statements concerning a candidate for public office, thereby causing the sovereign voters to reject a candidate who in reality may have been their choice but for the false publication. That such has been the law almost from our National beginning is reported in *Commonwealth* v. *Clap,* 4 Mass. at p. 169 (1808), " * * * the publication of falsehoods and calumny against public officers or candidates for public office, is an offense most dangerous to the people, and deserves punishment, because the people may be deceived, and reject the best citizen to their great injury, and it may be, to the loss of their liberties".

The same general law for the protection of public citizen's reputation was in recent years accorded in *Caldwell* v. *Crowell-Collier,* 161 Fed. (2) 333, 4/21/47, in which was ruled—

"If natural or necessary result of false imputation is to hold one up to public hatred, contempt, or ridicule, or to prejudice him in his profession, office, occupation, or employment, and more particularly in his public office, it is libelous per se. False charges need not be made in a direct

manner, if words in their ordinary meaning convey it, to render a statement actionable." Since above cited case was based upon a false and malicious statement, in which it was vaguely insinuated that the governor was indifferent to lynchings in his state, allegedly printed pursuant to a public statement made by the Florida governor, same approximately parallels petitioner's case, and the Court of Appeals should have made a decision in harmony therewith, as this case was cited in petitioner's appeal.

Since not even a scintilla of evidence was adduced to prove that petitioner had said or done the things imputed to him in the article these precedents of law should have been invoked by the courts below to give petitioner's personal reputation the protection afforded by the laws cited supra.

Further, the decision of the courts below should be reviewed as a means to the preservation of the laws which have been developed to protect one's personal reputation even though they are in public office or become a candidate for such. Since the decisions in question are of National scope the questions involved are of far-reaching importance.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7066.

MARK J. HAMMETT, *Appellant,*

versus

TIMES-HERALD, INC., a body corporate, also known as WASHINGTON TIMES-HERALD, INC., *Appellee.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE.

(Argued November 11, 1955. Decided November 14, 1955.)

Before PARKER, Chief Judge, SOPER, Circuit Judge, and BARKSDALE, District Judge.

John S. White for Appellant, and John Henry Lewin (David C. Green, Venable Baetjer & Howard, and Perry S. Patterson on brief) for Appellee.

PER CURIAM:

This is an appeal in a libel case based on a newspaper article ridiculing a brochure circulated by a candidate for public office in which he highly recommended himself to the voters. The case was submitted to a jury in a fair and im-

partial charge to which no exception was taken. Certain instructions requested were not given, but the law was fairly covered in the general charge. There were no errors in the admission or rejection of testimony that are worthy of consideration. If there was any error in the trial of the case, it was in not directing a verdict for defendant; for the ridiculing of the self laudatory brochure did not exceed fair comment and there was nothing in the concluding line of the article "Anybody like to go with him steady?" which justifies the construction that it charged homosexuality by innuendo. Contention to that effect is frivolous.

Affirmed.

IN THE

Supreme Court of the United States

October Term 1956
No. 678

MARK J. HAMMETT,

Petitioner,

vs.

TIMES-HERALD, INC.,

Respondent.

On Petition For a Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit

MEMORANDUM FOR RESPONDENT IN OPPOSITION

The Petitioner seeks to have this Court review the action of the Fourth Circuit in affirming the jury's general verdict and the judgment in favor of the Respondent given in the United States District Court for the District of Maryland in an action for libel brought by the Petitioner.

The libel action was tried to a jury in the District Court and consumed five full trial days. The publication that the Petitioner alleged to be libelous was a column published in the Defendant Respondent's newspaper (Petitioner's App. 1 f.). That column commented in a humorous and ironical vein upon a campaign brochure of which the Petitioner had distributed over 20,000 copies (Respondent's App. 13.) in the course of his campaign for the Republican nomination for the United States House of Representatives in the spring of 1952.

The Petitioner purported to find a whole congeries of libels in the Respondent's column (which, it may be noted, was more than half composed of direct quotations, set in quotation marks, from the Petitioner's brochure); he directed the chief thrust of his action, however, against the last line of the column, alleging that that line implied that he was addicted to homosexuality or other irregular sexual practices.

The District Court instructed the jury as a matter of law that nothing in the column was susceptible of a libelous innuendo with the exception of the last line. (Petitioner's App. 14.) As to the last line the question was fully and carefully presented to the jury. (Petitioner's App. 14 f.) The jury returned a general verdict in favor of the Defendant without answering the four special questions submitted to it—thus necessarily finding that the last line was not susceptible of any libelous innuendo.

The Court of Appeals in its per curiam opinion found no error in the trial and affirmed the judgment below after remarking that any contention to the effect that the last line of the article charged homosexuality by innuendo "is frivolous". Indeed, the Court of Appeals said in its opinion that, "If there was any error in the trial of the case, it was in not directing a verdict for defendant * * *".

We submit that a mere reading of the Petitioner's brochure (found in the Record at pp. 2a to 8a of the Appendix to the Petitioner's Brief in the Court of Appeals) is in itself quite sufficient to reveal the frivolous nature of the Petitioner's contentions, both below and on his Petition here.

In addition, the Petitioner has failed to show any of the reasons usually considered by this Court in the exercise of its discretion on petitions for writs of certiorari. See Sup. Ct. Rule 19. No conflict of decision among Courts of Appeals is shown; no important State or Territorial question has been decided in conflict with State or Territorial law; no Federal question is raised which should be settled by this

Court; no Federal question has been decided in a way to conflict with applicable decisions of this Court; and there has been no departure from the accepted and usual course of judicial proceedings. On the contrary, the Petitioner received below a full and careful trial of his action. The issue raised is one of fact—the determination of the meaning in context of certain words. The issue was determined against the Petitioner, after five days of trial, by a jury. The Court of Appeals for the Fourth Circuit found no possible justification for disturbing the result below in any respect.

It is, therefore, respectfully submitted that the Petition ought to be denied.

Respectfully submitted,

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Attorneys for the Respondent.

PERRY S. PATTERSON,

Of Counsel.